

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

B.P.J. by her next friend and mother, HEATHER JACKSON,

Plaintiff,

v.

WEST VIRGINIA STATE BOARD OF
EDUCATION, HARRISON COUNTY BOARD
OF EDUCATION, WEST VIRGINIA
SECONDARY SCHOOL ACTIVITIES
COMMISSION, W. CLAYTON BURCH in his
official capacity as State Superintendent, DORA
STUTLER in her official capacity as Harrison
County Superintendent, and THE STATE OF
WEST VIRGINIA,

Defendants,

and

LAINY ARMISTEAD,

Defendant-Intervenor.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

**PLAINTIFF’S MOTION *IN LIMINE* TO EXCLUDE REFERENCES TO PLAINTIFF
BY HER NAME GIVEN AT BIRTH (“DEADNAME”) OR USING MALE PRONOUNS
(HE/HIM) AND SUPPORTING MEMORANDUM OF LAW**

Pursuant to Federal Rule of Evidence 611, Plaintiff B.P.J., by and through her next friend and mother, Heather Jackson, hereby moves the Court to exclude any references to Plaintiff by her name given at birth (“deadname”) or using male pronouns (he/him) while she is in the courtroom.

ARGUMENT

Rule 611 of the Federal Rules of Evidence gives district courts “broad discretion over the presentation of evidence in the course of the trial[.]” *Callahan v. Pac. Cycle, Inc.*, 756 F. App’x 216, 224 (4th Cir. 2018). Specifically, Rule 611(a) provides that the “court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to: (1) make those procedures effective for determining the truth; (2) avoid wasting time; and (3) protect witnesses from harassment or undue embarrassment.” Fed. R. Evid. 611(a). Courts often use this power to accommodate child witnesses. *See, e.g., United States v. Counts*, No. 18 Cr. 141, 2020 WL 598526, at *4 (D.N.D. Feb. 7, 2020) (allowing child witness to testify while holding small foam stress relief balls as comfort objects).

Plaintiff B.P.J., a minor twelve-year-old girl who is transgender, should not be subjected to harassment or undue embarrassment at trial. “Misgendering” means referring to a person using terminology that does not reflect their gender identity. Misgendering a minor child like B.P.J. can be especially distressing. (Dkt. No. 99 (Pl’s Opp. to Mot. to Intervene) at 18.) Accordingly, any references to B.P.J. while she is in the courtroom should not include her deadname or male pronouns. The parties agreed to similar limitations for B.P.J.’s deposition without prejudicing the interests of Defendants in any way. (*See* Pelet del Toro Decl., Exs. A-B.)

Various courts have recognized that misgendering an individual who is transgender, such as by using a deadname or an incorrect pronoun, is both harmful and unnecessary. *See, e.g., Stanley v. City of N.Y.*, 141 N.Y.S.3d 662, 672 n.5 (N.Y. Sup. Ct. 2020) (“Courts addressing the issue [of deadnaming] have almost uniformly found the practice hostile, objectively offensive, and degrading.”) (citing Chan Tov McNamarah, *Misgendering as Misconduct*, 68 UCLA L. Rev. Disc. 40, 43 n.6 (2020) (citing *G.G. ex rel. Grimm v. Gloucester Cnty. Sch. Bd.*, 822 F.3d 709, 716 (4th

Cir. 2016) (explaining that misgendering “display[s] hostility”)); *Hampton v. Baldwin*, No. 18 Civ. 550, 2018 WL 5830730, at *2 (S.D. Ill. Nov. 7, 2018) (quoting medical testimony that “misgendering transgender people can be degrading, humiliating, invalidating, and mentally devastating”).

Granting the requested relief is also consistent with this Court’s prior order granting permissive intervention, in which the Court noted that it “will not order any party to use specific language in this case” and that parties “may use the language they find necessary to support their respective positions.” (Dkt. No. 130 (Intervention Order) at 6.) In that order, the Court also noted that parties “should always be mindful to show the respect due other parties.” (*Id.*) Here, B.P.J. does not request that Defendants be ordered to affirmatively use female pronouns or that Defendants limit the language in their filings. B.P.J. asks that, as a courtesy and to avoid needless harm, Defendants refrain from referring to B.P.J. by her deadname or using male pronouns while she is present in the courtroom.

CONCLUSION

Accordingly, Plaintiff respectfully moves this Court to preclude Defendants and their counsel and witnesses at trial from referring to Plaintiff B.P.J. by her deadname or using male pronouns while B.P.J. is present in the courtroom.

Dated: June 22, 2022

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Respectfully Submitted,
/s/ Loree Stark

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CERTIFICATE OF SERVICE

I, Loree Stark, do hereby certify that on this 22nd day of June 2022, I electronically filed a true and exact copy of the *Plaintiff's Motion in Limine to Exclude References to Plaintiff by Her Name Given at Birth ("Deadname") or Using Male Pronouns (He/Him) and Supporting Memorandum of Law* with the Clerk of Court and all parties using the CM/ECF System.

/s/ Loree Stark

Loree Stark

West Virginia Bar No. 12936